

SouthTrust Bank

P.O. Box 2554
Birmingham, AL 35290



May 7, 2004

Ms. Jennifer J. Johnson
Secretary, Board of Governors
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551
Attention Docket No. R-1187

Re: Proposed amendments to add a model form for financial institutions to use if they furnish negative information to consumer reporting agencies

Dear Ms. Johnson:

SouthTrust Bank (“SouthTrust”) appreciates the opportunity to comment on the issues under consideration by the Federal Reserve Board. SouthTrust Corporation is a \$51.9 billion regional bank holding company with over 717 financial centers located in nine states. Please find below comments on the proposed rule to add a model form for financial institutions to use if negative information is furnished to consumer reporting agencies (CRAs).

The proposed rule provides the model notice that financial institutions may use in order to comply with the notice requirement in section 623(a)(7) of the Fair Credit Reporting Act (FCRA) and section 217 of the Fair and Accurate Credit Transactions Act (FACT Act). SouthTrust is considering complying with this proposed rule by including the model notice in the combined Privacy Notice and Fair Credit Reporting Act Notice (Privacy/FCRA Notice) that is provided to consumers who are customers. However, when considering this option for compliance, two issues arise.

The first issue is whether the inclusion of the negative information notice in the Privacy/FCRA Notice is permitted. We argue that the inclusion of the notice is allowed. When describing the required notice requirements, the FACT Act states: “If the notice is provided to the customer prior to furnishing the negative information to a consumer reporting agency, the notice may not be included in the initial disclosures provided under section 127(a) of the Truth in Lending Act.” FACT Act § 217(a)(7)(B)(ii). Therefore, the FACT Act allows the negative information notice to be included with other notices, provided to the customer, as long as it is not included with the section 127(a) disclosures of the Truth in Lending Act. SouthTrust requests that Regulation V be clarified to allow for inclusion of the negative information notice with the Privacy/FCRA Notice.

Secondly, the proposed rule does not address the issue of whether the negative information disclosure must be provided retroactively to all existing customers.

Allowing this notice to apply retroactively will create both a regulatory and financial burden on lenders by requiring a special notice to all existing customers. This would be a great expense to the bank. Alternatively, the proposed rule allows for the negative information notice to be included with the notice of default or billing statement. Including the negative information notice with our notice of default will complicate the notice of default, whose primary purpose is to collect a debt. The intent of the negative information notice appears to be to persuade the customer to avoid default and avoid having negative information reported. If the negative information notice is included in a default notice, the consumer is already delinquent and negative information is soon to be reported. If the negative information notice is included in the default notice the legislative intent of the FACT Act is not being followed. Additionally, if the negative information notice were to be included in our statements, we would be forced to send a special notice to all non-statemented customers. This special mailing would effect approximately 220,000 customers and would create a cost of approximately \$81,000 in postage alone. Should this section be retroactive, huge burdens will be created for the bank. Therefore, we suggest adding the following paragraph to section 222.1 of Regulation V:

NO RETROACTIVITY. – This section shall not apply to negative information furnished to credit bureaus concerning accounts, or loans, established prior to the effective date of this section.

The proposed model language is a convenient means to comply with section 217 of the FACT Act. However, clarification regarding how to provide the negative information notice is needed. SouthTrust requests clarification of the rule that would allow the notice to be included in the Privacy/FCRA Notice and that a no retroactivity clause be added to prevent increased regulatory and financial burdens on institutions.

We thank you for the opportunity to comment on these regulations, and we hope these comments will be useful. Please feel free to call on me if I may be of assistance to you, or the Board, by providing further industry input.

Sincerely,

Kim B. Bailey, CRCM
Vice President
SouthTrust Bank